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MT LEGISLATIVE HISTORY

Chapter 251 1989

Bill (H) 558 S _____ Original bill & hist. ___C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 13	✓C	Hearing Date(s)	Mar 09	✓C
	Feb 16	✓C		Mar 11	✓C
		___C			___C
		___C			___C
Date Out	Feb 16	✓C		Mar 11	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 251

INTRODUCED BY COBB, BRADLEY, JACOBSON, KENNERLY, SIMON, KEATING

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

IN THE HOUSE

JANUARY 16, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
JANUARY 27, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 28, 1987	PRINTING REPORT.
JANUARY 29, 1987	SECOND READING, DO PASS.
JANUARY 30, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
FEBRUARY 6, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
FEBRUARY 10, 1987	SECOND READING, CONCURRED IN.
FEBRUARY 12, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

FEBRUARY 17, 1987	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

House BILL NO. 251

INTRODUCED BY Cobb Bradley Jacobson Kennedy

BY REQUEST OF THE LEGISLATIVE AUDIT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO PAY FOR AND ALLOCATE TO STATE AGENCIES THE COST OF ANY PERFORMANCE AUDIT OF THE STATE COMMUNICATIONS SYSTEM; REQUIRING ADOPTION OF RULES FOR USE OF COMMUNICATIONS EQUIPMENT BY EXECUTIVE, JUDICIAL, AND LEGISLATIVE BRANCH AGENCIES; AND AMENDING SECTION 2-17-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-17-302, MCA, is amended to read:

"2-17-302. Communication systems. (1) The department of administration shall:

(a) provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points.

(b) exercise general supervision over all existing communications systems for all agencies of state government;

(c) plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(d) approve standards and procedures for selection, acquisition, and operation of communications equipment;

(e) insure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered.

(f) provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(g) provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions as the department may establish;

(h) accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(i) foster the development of new and innovative

LC 0601/01

INTRODUCED BILL
HB-251

communications systems and techniques within the state, including but not limited to satellite communications and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

(j) pay for and allocate to state agencies, as part of services rendered, the cost of any performance audit of the state communications system performed by or at the direction of the legislative auditor.

(2) The department may provide assistance to political subdivisions or nonprofit organizations, upon such terms that the department may establish, relative to state and interstate communications systems and techniques.

(3) ~~The department shall adopt adequate~~ Adequate rules for the use of any communications equipment and facilities now in use or hereafter made available must be adopted by the:

(a) department for executive branch agencies;

(b) supreme court for judicial branch agencies; and

(c) legislature by joint rule for members of the legislature and legislative branch agencies."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the department of administration to make rules on the subject of the provisions of this act is

extended to the provisions of this act.

-End-

city judge. He stated that his concern is that it will not meet Article VIII, Section 9 (4) of the Montana Constitution, which states in part "every other judge shall reside during his term of office in the district, county, township, precinct, city or town in which he is elected or appointed." He submitted written testimony. (Exhibit A).

There were no further opponents.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 482:

Rep. Miles asked Rep. Schye if both bills were needed and he stated that HB 482 was a much simpler bill.

Rep. Schye closed the hearing on HB 482.

HOUSE BILL NO. 558, Rep. Gould, District No. 61, stated that this bill is a very important piece of legislation. It revises and clarifies the test for responsibility for criminal conduct engaged in while intoxicated.

PROPONENTS:

MARC RACICOT, Attorney General's Office, stated that this bill is a useful vehicle in prohibiting situations where immunity is granted to people in serious criminal cases where they have in essence a revolver in one hand and a bottle of wine in the other.

ROBERT DESCHAMPS, County Attorney for Missoula County, and speaking on behalf of the Montana County Attorneys Association, stated that his bill is the most significant criminal justice bill that will be confronted in this session. He pointed out that this bill is already law in many states. He further explained that 80% of all crimes are committed while somebody is intoxicated. He strongly urged support.

MICHAEL KEEDY, Kalispell, District Judge, stated that people should be accountable for their actions because many offenders use their drunkenness to fortify themselves and they try to use their drunken condition as an excuse. He proposed an amendment to HB 482. (Exhibit A).

See Visitors' Register for further proponents.

There were no opponents.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 558:

Rep. Addy asked Mr. Deschamps about voluntary and involuntary line which does not appear in the bill or proposed amendments. Mr. Deschamps stated that the

involuntary produced language has been stricken and a person involuntarily intoxicated should not be included as a defense.

Mr. Racicot stated that the proposed amendment does speak to this issue.

Rep. Gould also stated that the proposed amendment will cover this problem.

Rep. Eudaily asked Mr. Racicot if there is a definition of intoxication. He stated that he believes intoxicated substance is defined in the criminal code.

Rep. Gould closed the hearing on HB 558 by stating that drunkenness as a defense must be stopped. He urged support for this legislation.

HOUSE BILL NO. 598, Rep. Rapp-Svrcek, District No. 51, stated that when Montana adopted the new criminal code in 1973, the writer wanted to make it clear that proving resistance was not required in a rape case. This bill provides that resistance by the victim is not required to show that an act that is an element of a sexual offense was without consent of the victim. He further stated that for the record the Woman's Law Caucus, from the University of Montana helped him work on the bill.

PROPONENTS:

SANDY CHANEY, Women's Lobbyist Fund, stated that she strongly supports HB 598 because it provides legal recourse for people who live under constant intimidation and constant fear. She submitted written testimony. (Exhibit A).

MARK J. MURPHY, Assistant Attorney General, representing the County Attorney's Association, stated that the Association supports this legislation.

See Visitors' Register for further proponents.

There were no opponents and no questions.

Rep. Rapp-Svrcek closed the hearing on HB 598.

HOUSE BILL NO. 460, Rep. Keenan, District No. 66, stated that this bill is very basic. It raises the fee in divorce proceedings. Page 5 states that the fee is raised from $30.00 to $55.00 with $50.00 being deposited in the state general fund and $5.00 to be deposited in the children's trust fund. She stated that the purpose in this raise is to fund displaced homemakers in the state.

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB251, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act requiring the Department of Administration to pay for a performance audit of the state communication system.

ASSUMPTIONS:
The Legislative Audit Committee will request one performance audit to occur in FY88. There will be approximately 2,350,000 long distance phone calls a year and it will be necessary to sample 384 of those calls for testing.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Revenue:	$ 0	$ 8,000	$ 8,000	$ 0	$ 0	$ 0
Expenditures:						
Personal Services	$ 0	$ 6,320	$ 6,320	$ 0	$ 0	$ 0
Operations	0	1,680	1,680	0	0	0
Total	$ 0	$ 8,000	$ 8,000	$ 0	$ 0	$ 0
General Fund	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0
Special Revenue	0	8,000	8,000	0	0	0
Total	$ 0	$ 8,000	$ 8,000	$ 0	$ 0	$ 0

David L. Hunter DATE 1/23/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE
JOHN COBB, PRIMARY SPONSOR

Fiscal Note for HB251, as introduced.

HB-251

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)			✓
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

EXHIBIT A
DATE 2-13-87
HB # 558

PROPOSED AMENDMENT
HOUSE BILL 558
Introduced (White) Copy

1. Page 1, line 12.
Following: "condition."
Strike: the remainder of line 12 through "." on line 22
Insert: "Evidence that the defendant was intoxicated is not admissible to prove that he did not have one of the mental states described in subsections (33), (37), and (58) of 45-2-101 unless he was compelled by another person to ingest the substance causing his condition or was deceived with respect to its intoxicating properties."

7044a/L:JEA\WP:jj

Judiciary COMMITTEE

BILL NO. 558 DATE Feb. 13, 1987

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MICHAEL KEEDY	KALISPELL	X	
R.L. Deschamps III	Missoula	X	
R Budd Gould	msla	X	
~~Jim Wheelan~~	~~Helena~~		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Rep. Bulger stated that he is unclear about the bill and moved to table it. A voice vote was taken and the motion CARRIED 7-6. HB 655, TABLED.

ACTION ON HOUSE BILL NO. 598:

Rep. Strizich moved that HB 598, DO PASS. Rep. Strizich moved amendments but after discussion withdrew his motion. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 598, DO PASS.

ACTION ON HOUSE BILL NO. 590:

Rep. Strizich moved DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 590 DO PASS.

ACTION ON HOUSE BILL NO. 558;

Rep. Gould moved that HB 558, DO PASS. He moved amendments and requested that Mr. MacMaster clarify them. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Gould moved that HB 558 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 558, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 509:

Rep. Darko moved that HB 509, DO PASS. Rep. Bulger moved amendments. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Darko moved that HB 509 DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 509 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 715:

Rep. Daily moved that HB 715 be tabled. Question was called and a voice vote was taken. The motion CARRIED 9-5. HB 715, TABLED.

HOUSE BILL NO. 127, Rep. Swift, District No. 64, stated that this act eliminates joint liability and the right to contribution among multiple tortfeasors in civil suits for death or injury to person or property resulting from negligence.

PROPONENTS:

JIM ROBISCHON, Montana Liability Coalition, supported this legislation.

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 16, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)		✓	
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)		✓	✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

2-16-87
19

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL 552

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Chairman

3) Page 1, lines 16 through 19.
Strike: "if" on line 16 through "an" on line 19
Insert: "and an"

2) Page 1, line 22.
Following: "offense"
Insert: "unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition"

AM0552a/JM/JM2

DATE March 9 1987
BILL NO HB 558

SUMMARY OF HB558 (GOULD)
(Prepared by Senate Judiciary Committee staff)

HB558 is by request of the Department of Justice and amends the statute relating to a person's responsibility for conduct while intoxicated. Under current law, a person who is intoxicated or drugged is criminally responsible for his conduct "unless such conduct is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law"and the condition can not be taken into consideration in determining the existence of a mental state.

The bill takes out any reference to "drugged" (presumably, "intoxicated" is intended to cover drugged situations as well as alcohol-related intoxication). The bill, as amended by the House, provides that a person who is intoxicated is criminally responsible for his conduct and that intoxication is not a defense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense "unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition".

COMMENTS: None.

C:\LANE\WP\SUMHB558.

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 9

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

DATE March 9th

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppo
Kathy Seeley	Dept of Justice	HB 163	✓	
Lon Whipple	Dept of Justice	HB 163 & 546	✓	
David N. Hull	City of Helena	HB 163	✓	
MIKE T MURPHY	DOJ	HB 163	✓	
David LACKMAN	MT Public Health Assn	HB 163	✓	
" "	" " " "	HB 546	✓	
Rick Day	Dept. of Revenue	HB 55	n/a	n/
David LACKMAN	MT Public Health Assn	HB 509	✓	
MARC RACICOT	MT County ATTORNEYS	HB 552	✓	
Brookes Morin	City of Helena	HB 163	✓	
Kaylee Boston	Stop DUI Task Force	HB 163	✓	
Catherine Lovell	Am. Insurance Assoc	HB 546	✓	
JR Budd Arnold	Dist 61	HB 552	—	
Fred W. Henningsen	Montana Broadcasters Assn	HB 509	✓	
Arthur L Wood	Federal Aviation Admin	HB 509	✓	
George Schunk	Dept of Justice	HB 546	✓	
JUDITH CARLSON	Co Health	HB 163	✓	
M.E. "Micky" Nelson	Stop DUI Task Force	HB 163	✓	
Bonnie Tippy	AII	HB 546	✓	
Randy Gray	NAII; State Farm	HB 546	✓	

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 9, 1987

The thirty-eighth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on March 9, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All member were present.

CONSIDERATION OF HB 396: Representative Robert Pavlovich of Butte introduced HB 396 (see Exhibit 1).

PROPONENTS: Larry Majerus, Department of Justice, said the bill is just a clarification in the drivers suspension law.

OPPONENTS: None

DISCUSSION ON HB 396: Senator Mazurek asked what an example would be of fraudulent use of a drivers license. Mr. Majerus said someone who uses another person's license to get into a bar while under the drinking age. He said the bill is for the guy that let the under age youth use the license to get into a bar (Exhibit 1A).

Representative Pavlovich closed on the bill.

CONSIDERATION ON HB 558: Representative Bud Gould of Missoula presented HB 558 to the committee (see Exhibit 2).

PROPONENTS: Marc Racicot, Montana County Attorney Association, explained the history of the current law. He said in the past, the common law wanted a person responsibile for his voluntary acts including consuming of alcoholic beverages. He said there were two exceptions to that: if a person was compelled by another to consume alcohol and or a person was deceived into drinking the alcohol. He said the alcohol involvement in a crime was used in the past to determine the defense. He said there are 16 states that prohibit the use of involuntary intoxication in criminal actions. He said the more one drinks while driving the more in trouble a person is, but that is exactly the opposite when it comes to criminal crimes. He said the more a person has to drink while involved in a criminal crime, the easier the conviction. He said this happens most often in homicide cases where intoxication can be used as a defense.

OPPONENTS: None

DISCUSSION ON HB 558: Senator Halligan questioned why the involuntary

drugged part is striken from the bill. Mr. Racicot said the drugged part was eliminated because those involved in drafting the bill felt that whether it was drugs or alcohol it still meant that the person was under the influence. He said the word "involuntary" was striken because of section 45-2-202. He said since the statute was already there, the drafters decided to take this one out.

Senator Pinsoneault asked if this bill will effect the sentensing process. Mr. Racicot felt the bill would do nothing to the sentensing process.

Senator Halligan asked how the defendant will prove that he was forced or deceived into drinking alcohol. Mr. Racicot replied the defendant will not have a second hearing on this; he must take the burden in proving it during the only hearing.

Senator Mazurek inquired what part was purposed by the House for this bill. Mr. Racicot left that language for the committee to look at (see Exhibit 3).

Representative Gould closed.

CONSIDERATION ON HB 509: Representative Ted Schye of House District #18 introduced HB 509 (see Exhibit 4 and 4A).

PROPONENTS: David Lackman, Montana Public Health Association and American Public Health Association, supported the bill (see witness sheet).

Fred Hasskamp, Montana Aeronautics Division, favored the bill because the FFA is unable to enforce the federal law that is 91.11, which deal with alcohol and drugs. He said the Montana law enforcement can not arrest a drunk pilot because there is no statute for an arrest in this area. He said the states have to put a statute in the books to follow the federal law.

Authur Wells, Federal Aviation Administration, said the FFA purposed to change the law in 1981 to add .04 as a maximum percentage for alcohol to the existing eight hours from "bottle to throttle" rule that they FFA had at that time. He said the review on this idea did not turn out very well. He stated that in 1986 the final rule adopted required any crew member to submit to a test conducted by a local law enforcement officer, and not a member of the FFA like it was purposed in the 1981 version. He said the FFA will take action against anyone who will not take the test. He said alcohol will have an affect on a person flying more so then one that is driving because of the lack of oxygen.

OPPONENTS: None.

DISCUSSION ON HB 509: Senator Pinsoneault asked why the word "civil" is

SENATE JUDICIARY
EXHIBIT NO. 3
DATE March 19, 1987
BILL NO. HB 558

HOUSE BILL NO. 558

INTRODUCED BY GOULD, MERCER, DARKO, CAMPBELL, MANNING, IVERSON, GILBERT, ELLISON, STANG, PETERSON, WALLIN, HAYNE, GIACOMETTO, JONES, C. SMITH, LORY, BULGER, QUILICI, FRITZ, DEMARS, ADDY, DAILY, GLASER, SWYSGOOD, BRANDEWIE, B. BROWN, HAGER, RASMUSSEN

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING THE TEST FOR RESPONSIBILITY FOR CRIMINAL CONDUCT ENGAGED IN WHILE INTOXICATED; AND AMENDING SECTION 45-2-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-2-203, MCA, is amended to read:

"45-2-203. Responsibility -- intoxicated ~~or--drugged~~ condition. A person who is in an intoxicated ~~or-drugged~~ condition is criminally responsible for his conduct unless ~~such-condition-is-involuntarily-produced-and-deprives-him-of his-capacity-to-appreciate-the-criminality-of-his-conduct-or to-conform-his-conduct-to-the-requirements-of-law~~ if he knew ~~when--he--consumed,--smoked,-sniffed,-injected,-or-otherwise ingested-the-substance-causing-the-condition-that-it-was--an intoxicating--substance.~~ An AND AN intoxicated ~~or-drugged~~ condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense, UNLESS THE DEFENDANT PROVES THAT HE DID NOT KNOW THAT IT WAS AN INTOXICATING SUBSTANCE WHEN HE CONSUMED, SMOKED, SNIFFED, INJECTED, OR OTHERWISE INGESTED THE SUBSTANCE CAUSING THE CONDITION."

-End-

was compelled by another person to ingest the substance causing his condition or that

THIRD READING

the fee deals with filing in the wrong county, so the person will have to refile again in the right county. He said the House deleted that.

Representative Pistoria closed.

EXECUTIVE ACTION:

ACTION ON HB 53: Senator Blaylock moved to strike the previous adopted amendments because in the bill Valencia found a statute that will keep the maintainance of the Old Supreme Court Chambers up. The motion CARRIED. Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED.

CONSIDERATION OF HJR 21: Representative John Mercer of Polson presented HJR 21 (see Exhibit 3).

PROPONENTS: None

OPPONENTS: Pat Melby, Montana State Bar Association, said that HJR 21 will cause someone to pay a $100 filing fee for a second judge to come to a county and do a trial. He said the first judge was disqualified, but the first judge picks the second judge.

Karl Englund, Montana Trial Lawyers Association, opposed the bill because a second judge will have to be "broken in" to a case by a lawyer that has been with the case for months and then part of the trial which the first judge was disqualified at.

John Hoyt, Great Falls lawyer, opposed the bill also.

DISCUSSION ON HJR 21: Senator Pinsoneault asked what the sister states do with this kind of situation. Mr. Hoyt said some of the states can have up to three judges for a trial, while other only allow one no matter what. Mr. Englund commented that he rarely uses a challenge to have another judge come into one of his trials.

Representative Mercer closed on HJR 21.

EXECUTIVE ACTION

ACTION ON HB 664: Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED.

ACTION ON HB 396: Senator Pinsoneault moved the bill BE CONCURRED IN. The motion CARRIED with Senator Blaylock voting no.

ACTION ON HB 558: Senator Yellowtail commented that there are ways to conceal alcohol in drinks and drugs also. Senator Crippen said the question is if someone put something in your drink, if you are responsible

for your actions or is the guy that drugged up your drink responsible. Senator Crippen asked what happens to the guy that didn't want to drink, but somehow gets the alcohol in his body and gets into a car and kills someone. Senator Blaylock said that guy would have to prove he didn't know he had alcohol in his system by his own choice. Senator Galt commented that someone could force someone to drink or take a drug to when they don't want to take it.

Senator Blaylock moved the bill BE CONCURRED IN. The motion CARRIED with Senator Crippen voting no.

ACTION ON HB 236: Senator Mazurek explained that the committee had already adopted some amendments to this bill (see STANDING COMMITTEE REPORT 1, 2, and 4). Senator Mazurek presented a new amendment that would take out an amendment that the House put in (Exhibit 4). Senator Pinsoneault moved the amendment. The motion CARRIED. Senator Pinsoneault moved the bill BE CONCURRED AS AMENDED. The motion CARRIED.

ACTION ON HB 256: Senator Pinsoneault agreed with Karl Englund's statement about how people who know they have a big case ahead of them will pay this fee, but it is a pretty steep fee for most folks. Senator Pinsoneault moved the amendment that Pat Melby gave during the meeting, which would decrease the fees. The motion FAILED with Senators Galt, Bishop, Halligan, Beck, and Crippen voting no. Senators Pinsoneault, Blaylock, Brown, Yellowtail, and Mazurek voted yes.

Senator Bishop moved the bill BE CONCURRED IN. The motion CARRIED with Senators Blaylock, Pinsoneault, and Yellowtail voting no.

ACTION ON HB 123: Senator Blaylock moved to reinsert the "lawyers" back into the bill. Senator Pinsoneault agreed with Representative Bradley that lawyers can't become judges without an election, so they can not set precedence. Senator Blaylock stated that Supreme Court decisions take precedence, but not district courts. The motion CARRIED with Senators Galt, Crippen, Pinsoneault voting no.

Senator Blaylock moved the bill BE CONCURRED AS AMENDED. The motion CARRIED with Senators Crippen, Galt, and Pinsoneault voting no.

ACTION ON HB 435: Robert Scott of the Criminal Defense Department stated that the affect of removing lines 21 on page 3 of the bill would allow the state to seize the vehicle no matter what the amount of the drug is in the car. Senator Halligan asked if he had a friend in his car smoking a joint and the police pulled him over, would the state be able to take the car. Mr. Scott said that the state could get his car if this language is taken out of the bill. Senator Halligan thought that was unfair to the driver. Valencia proposed some amendments for this bill (see Exhibit 5). Mr. Scott said he would put into writing his purposals to the bill for the next meeting.

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 11

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 11 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 553

Third reading copy (blue color)

Revise and clarify responsibility for crome committed while intoxicated. Gould (Van Valkenburg)

Respectfully report as follows: That HOUSE BILL No. 553

~~XXXXXX~~ ~~DO PASS~~ BE CONCURRED IN

~~DO NOT PASS~~

Senador Hassured
Chairman.